

AUG 06 2014

NOT FOR PUBLICATION

SUSAN M. SPRAUL, CLERK  
U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

In re: ) BAP No. CC-13-1483-TaDKi  
 )  
 IMAGINE FULFILLMENT SERVICES, ) Bk. No. 12-20544-WB  
 LLC, )  
 )  
 Debtor. ) Adv. Pro. No. 12-1514-WB  
 )  
 )  
 DC MEDIA CAPITAL, LLC, )  
 )  
 Appellant, )  
 )  
 v. ) MEMORANDUM\*  
 )  
 IMAGINE FULFILLMENT SERVICES, )  
 LLC; UNITED STATES TRUSTEE, )  
 )  
 Appellees. )  
 )

Argued and Submitted on June 26, 2014  
at Pasadena, California

Filed - August 6, 2014

Appeal from the United States Bankruptcy Court  
for the Central District of California

Honorable Mark D. Houle,\*\* Bankruptcy Judge, Presiding

\*This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have (see Fed. R. App. P. 32.1), it has no precedential value. See 9th Cir. BAP Rule 8013-1.

\*\*Judge Houle entered the judgment in the adversary proceeding from which appellant appeals. Judge Julia W. Brand, however, entered the Amended Memorandum Decision (for publication) and order on partial summary judgment that determined, prior to entry of the Judgment, the specific narrow issue as to which appellant D.C. Media Capital, LLC seeks review. See Imagine Fulfillment Servs., LLC v. DC Media Capital, LLC (In re Imagine Fulfillment Servs., LLC), 489 B.R. 136 (Bankr. C.D. Cal. 2013).

1 Appearances: Jeffrey J. Williams of the Law Offices of Jon A.  
2 Kodani argued for Appellant DC Media Capital, LLC;  
3 Aram Ordubegian of Arent Fox LLP argued for  
Appellee Imagine Fulfillment Services, LLC.

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4 Before: TAYLOR, DUNN, and KIRSCHER, Bankruptcy Judges.

## 6 INTRODUCTION

7 Judgment creditor D.C. Media Capital, LLC ("DC Media")  
8 appeals from the bankruptcy court's judgment in favor of  
9 chapter 11<sup>1</sup> debtor Imagine Fulfillment Services, LLC (the  
10 "Judgment"). Pursuant to §§ 547 and 550, the Judgment avoids and  
11 allows the Debtor to recover as a preferential transfer a  
12 prepetition judgment lien filed by DC Media. DC Media argues  
13 that the bankruptcy court erred when it determined on summary  
14 judgment that DC Media's prepetition state court judgment against  
15 Debtor was not a contingent debt for purposes of its insolvency  
16 analysis. We determine that the bankruptcy court did not commit  
17 error and, thus, we AFFIRM.

## 18 PROCEDURAL AND FACTUAL BACKGROUND<sup>2</sup>

19 Debtor filed its voluntary chapter 11 petition in March  
20 2012. Eighty-nine days before the filing, DC Media filed a  
21 Notice of Judgment Lien with the California Secretary of State  
22

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23 <sup>1</sup> Unless specified otherwise, all chapter and section  
24 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and  
25 all "Rule" references are to the Federal Rules of Bankruptcy  
Procedure, Rules 1001-9037. All "Civil Rule" references are to  
the Federal Rules of Civil Procedure.

26 <sup>2</sup> Most of the relevant undisputed facts are set forth in  
27 the bankruptcy court's published decision. Appellant seeks  
28 review of the bankruptcy court's ruling regarding only one  
transfer identified in the Amended Memorandum Decision as  
"Transfer One." We limit our summary of facts accordingly.

1 ("Judgment Lien") with respect to a state court judgment in the  
2 total amount of \$3,997,223 against the Debtor. Debtor appealed  
3 from the state court judgment after the lien was recorded but  
4 before the petition date.

5 In the bankruptcy case, Debtor filed an adversary proceeding  
6 against DC Media seeking to avoid three alleged preferential  
7 transfers, the first of which was the filing of the Judgment  
8 Lien,<sup>3</sup> and to recover and preserve the avoided transfers for the  
9 benefit of the estate. Debtor then sought partial summary  
10 judgment or adjudication of facts as to all three transfers (the  
11 "Debtor's First MSJ"). DC Media filed a cross motion seeking  
12 partial summary judgment as to two alleged affirmative defenses  
13 ("DC Media's MSJ"). DC Media also opposed Debtor's First MSJ.

14 In DC Media's opposition to Debtor's First MSJ, it asserted  
15 three grounds to support denial: (1) that no transfer was made  
16 within the relevant 90-day prepetition window; (2) that its  
17 evidence successfully rebutted the presumption of insolvency; and  
18 (3) that Debtor failed to show that DC Media would receive more  
19 from the transfers than it would receive in a hypothetical  
20 chapter 7 liquidation had the transfers not been made. In  
21 support of its third argument, DC Media argued that it held a  
22 perfected security interest in Debtor's personal property, not  
23 only as a result of the Judgment Lien, but also based on  
24 DC Media's prepetition service on the Debtor of an order to

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26 <sup>3</sup> Debtor identified "Transfer 2" as DC Media's filing of an  
27 abstract of the state court judgment with the Los Angeles County  
28 Recorder. "Transfer 3" was the seizure of \$81,196 via levy by  
the sheriff from Debtor's prepetition bank account - DC Media's  
partial collection on account of the state court judgment.

1 appear for judgment debtor exam ("ORAP lien"). DC Media argued  
2 that Debtor never sought to avoid the ORAP lien and asserted that  
3 even if all other transfers alleged by Debtor were avoided,  
4 DC Media would still remain a secured creditor.

5 Prior to the hearing on the Debtor's First MSJ, Debtor  
6 sought leave to amend the complaint to avoid the ORAP lien.  
7 DC Media filed limited opposition. The hearing on the Debtor's  
8 request to amend was to be heard the day after the hearing on  
9 Debtor's First MSJ.

10 The bankruptcy court heard oral argument on Debtor's First  
11 MSJ in November 2012, and took both Debtor's First MSJ and  
12 DC Media's MSJ under submission. It then discussed scheduling  
13 with the parties, including timing of Debtor's amended complaint  
14 and the future hearing on Debtor's proposed disclosure statement.  
15 The parties agreed that Debtor could amend the complaint, but  
16 questioned its potential impact if filed before the bankruptcy  
17 court's decision on the two under-submission motions. To avoid  
18 confusion, the Court vacated the hearing on the Debtor's motion  
19 for leave to amend and agreed to determine later the appropriate  
20 time for Debtor to file the first amended complaint.

21 The bankruptcy court entered its Amended Memorandum Decision  
22 on March 12, 2013, and its order on March 14, 2013, granting, in  
23 part, and denying, in part, Debtor's First MSJ (the "First MSJ  
24 Order"). As to the Judgment Lien, the bankruptcy court found  
25 there to be no dispute that it was a transfer of an interest of  
26 the Debtor in property to or for the benefit of Debtor's  
27 creditor, DC Media, on account of the antecedent debt established  
28 by the state court judgment. Therefore, the bankruptcy court

1 addressed only three disputed issues: (1) whether the transfer  
2 was made within the 90-day preference period; (2) whether Debtor  
3 was insolvent at the time of the transfer; and (3) whether the  
4 Judgment Lien, if not avoided, would allow DC Media to receive  
5 more than it would in a hypothetical liquidation.

6 The bankruptcy court granted summary adjudication as to all  
7 but one of the elements necessary to avoid the Judgment Lien.  
8 Based on the ORAP lien, it denied summary adjudication solely as  
9 to whether the Judgment Lien allowed DC Media to receive more  
10 than it would in a hypothetical chapter 7 liquidation had the  
11 transfer not occurred. Regarding the insolvency element, the  
12 bankruptcy court reasoned that the question turned on whether the  
13 state court judgment was a contingent liability. If it were not  
14 contingent, the full amount must be included in the insolvency  
15 analysis - which would conclusively eliminate any genuine issue  
16 of material fact on summary judgment based on the balance sheet  
17 analysis. The bankruptcy court held, as a matter of law in the  
18 Ninth Circuit, that the state court judgment was not a contingent  
19 debt and thus, that DC Media failed to show the existence of  
20 disputed facts regarding Debtor's insolvency.

21 The bankruptcy court granted summary judgment as to one of  
22 the remaining two transfers, and denied summary judgment as to  
23 the other. It denied DC Media's MSJ in its entirety.

24 DC Media filed a notice of appeal from the First MSJ Order  
25 and a motion for leave to appeal, recognizing it as an  
26 interlocutory order. The Bankruptcy Appellate Panel entered an  
27 order denying leave and dismissing the first appeal on May 21,  
28 2013. Thereafter, the bankruptcy court entered its order

1 granting Debtor's motion for leave to file its amended complaint  
2 and Debtor filed its second motion for partial summary judgment  
3 or, in the alternative, for summary adjudication of facts  
4 ("Debtor's Second MSJ").

5 Debtor's Second MSJ sought resolution in its favor on the  
6 remaining preferential transfer element. DC Media did not oppose  
7 the Debtor's Second MSJ.

8 The bankruptcy court thereafter entered its order granting  
9 Debtor's Second MSJ and the separate Judgment thereon. The  
10 Judgment provides that: "With respect to [the Judgment Lien]  
11 summary judgment is granted as to [Debtor's] First, Second, and  
12 Third Claims for Relief."<sup>4</sup> Judgment, ECF Dkt. 111 at 2:4-5. It  
13 further provides that the Judgment Lien is avoided and preserved  
14 for the benefit of the estate; and DC Media's secured claim is  
15 disallowed.

16 DC Media timely appealed.

#### 17 **JURISDICTION**

18 The bankruptcy court had jurisdiction under 28 U.S.C.  
19 §§ 1334 and 157(b)(2)(F).

20 We have jurisdiction under 28 U.S.C. § 158(a) and (b) to  
21 hear appeals from final judgments, orders, and decrees; and with  
22 leave of the Panel, from interlocutory orders and decrees of  
23 bankruptcy judges. The burden of demonstrating jurisdiction lies  
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25 <sup>4</sup> The First Claim for Relief sought avoidance and recovery  
26 of preferential transfers pursuant to §§ 547 and 550; the Second  
27 Claim sought to preserve the avoided transfers pursuant to § 551;  
28 and the Third Claim sought disallowance of DC Media's filed  
secured proof of claim, or reclassification as a general  
unsecured claim. The amended complaint also contained a Fourth  
Claim - for recovery of attorney's fees and costs of suit.

1 with the party asserting it. Kokkonen v. Guardian Life Ins. Co.  
2 of Am., 511 U.S. 375, 379-80 (1994). Here, DC Media states in  
3 its opening brief<sup>5</sup> that the Judgment is final for purposes of  
4 appellate jurisdiction. It reiterates arguments it made in  
5 response to the query from the Clerk of the BAP regarding  
6 finality, to the effect that the Fourth Claim contained in the  
7 amended complaint but not addressed in the Judgment (which sought  
8 attorney's fees), need not be resolved for purposes of a finality  
9 determination pursuant to Budinich v. Becton Dickinson & Co.,  
10 486 U.S. 196 (1988). Although we agree that the lack of an  
11 attorney's fees determination does not render the Judgment not  
12 final for purposes of appeal, we also briefly reviewed the impact  
13 on finality of the lack of a separate judgment as to the two  
14 other transfers that were resolved by the First MSJ Order.

15 A motions panel in DC Media's first appeal (BAP 11-1141)  
16 denied leave to appeal the First MSJ Order. When the bankruptcy  
17 court entered the Judgment, resolving all remaining issues in the  
18 adversary proceeding (but for the attorney's fees), the First MSJ  
19 Order became final and appealable. See Munoz v. Small Bus.  
20 Admin., 644 F.2d 1361, 1364 (9th Cir. 1981) ("an appeal from the  
21 final judgment draws in question all earlier non-final orders and  
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23 <sup>5</sup> In light of the fact that the Judgment was entered in  
24 connection with a motion for "partial" summary judgment, and the  
25 inclusion of a fourth claim in the amended complaint, which was  
26 not addressed in the Judgment, the Clerk of the BAP issued an  
27 order requiring the parties to file and serve written responses  
28 explaining how the judgment on appeal is final. After review of  
DC Media's response, a motions panel found the order on appeal  
sufficiently final for purposes of appeal. Nonetheless, we have  
an independent duty to examine jurisdictional issues. Gen. Elec.  
Capital Auto Lease, Inc. v. Broach (In re Lucas Dallas, Inc.),  
185 B.R. 801, 804 (9th Cir. BAP 1995).

1 all rulings which produced the judgment"). This result is of  
2 particular import here because DC Media's sole issue on appeal  
3 was determined by the bankruptcy court when it ruled on the  
4 Debtor's First MSJ.<sup>6</sup>

5 Based on the foregoing review, we determine that we have  
6 jurisdiction under 28 U.S.C. § 158.<sup>7</sup>

#### 7 **ISSUE**

8 Whether the bankruptcy court erred in determining, as a  
9 matter of law, that the state court judgment was not a contingent  
10 debt.

#### 11 **STANDARD OF REVIEW**

12 We review summary judgment de novo. Bamonte v. City of  
13 Mesa, 598 F.3d 1217, 1220 (9th Cir. 2010). The question of  
14 whether a debt is contingent is a question of law subject to de  
15 novo review. Nicholes v. Johnny Appleseed (In re Nicholes),  
16 184 B.R. 82, 86 (9th Cir. BAP 1995).

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19 <sup>6</sup> Ordinarily there should be a separate document embodying  
20 a final judgment that is distinct from and in addition to an  
21 order granting a motion for summary judgment. See Rule 9021.  
22 Here, we located no separate judgment entered on the docket as to  
23 the two transfers that were resolved by the First MSJ Order. The  
24 parties effectively waived that requirement by treating the First  
25 MSJ Order as a final judgment coupled with the Judgment. See  
Casey v. Albertson's Inc., 362 F.3d 1254, 1256-59 (9th Cir.  
2004). And in addition, pursuant to Civil Rule 58(c)(2)(B) (made  
applicable here pursuant to Rule 7058), judgment on the other two  
transfers was deemed entered, at the latest, 150 days from entry  
of the First MSJ Order, which was March 14, 2013.

26 <sup>7</sup> DC Media also mentions in a footnote in its opening brief  
27 that although the Debtor's chapter 11 plan was confirmed, this  
28 appeal was not mooted thereby because the plan expressly  
"contemplates this appeal, and provides a remedy for the  
appellant in the event this appeal is successful." Appellant's  
Opening Br. at 3 n.1. We agree.

1 **DISCUSSION**

2 Civil Rule 56(c) (incorporated into the Bankruptcy Rules  
3 under Rule 7056) provides that a party may move for summary  
4 judgment when there is no genuine issue as to a material fact and  
5 the moving party is entitled to a judgment as a matter of law. A  
6 "genuine issue" is one where, based on the evidence presented, a  
7 fair-minded jury could return a verdict in favor of the nonmoving  
8 party on the issue in question. Anderson v. Liberty Lobby, Inc.,  
9 477 U.S. 242, 249 (1986). All justifiable inferences must be  
10 drawn in favor of the non-moving party. Id. at 255. Likewise,  
11 all evidence must be viewed in the light most favorable to the  
12 non-moving party. Lake Nacimiento Ranch v. San Luis Obispo  
13 Cnty., 841 F.2d 872, 875 (9th Cir. 1987). Therefore, viewing the  
14 evidence in the light most favorable to the non-moving party, we  
15 must determine whether there are any genuine disputes of material  
16 fact that remain for trial and whether the prevailing party is  
17 entitled to judgment as a matter of law. New Falls Corp. v.  
18 Boyajian (In re Boyajian), 367 B.R. 138, 141 (9th Cir. BAP 2007).

19 Pursuant to § 547(b)(3), for the Debtor to avoid the  
20 Judgment Lien as a preference, Debtor was required to establish  
21 that it was insolvent when the Judgment Lien was filed. Debtor  
22 is presumed to be insolvent 90 days before it filed its petition,  
23 pursuant to § 547(f), and it is undisputed that the Judgment Lien  
24 was filed 89 days before the petition date. DC Media can  
25 overcome the insolvency presumption only with substantial  
26 evidence of the Debtor's solvency on the date the Judgment Lien  
27 was filed. The bankruptcy court held that DC Media failed to do  
28

1 so.<sup>8</sup> As relevant here, it found, as a matter of law, that the  
2 state court judgment is a noncontingent liability.<sup>9</sup> We agree.

3 The Bankruptcy Code does not define the term "contingent."  
4 See In re Nicholes, 184 B.R. at 88. It is well settled, however,  
5 that "a debt is noncontingent if all events giving rise to  
6 liability occurred prior to the filing of the bankruptcy  
7 petition." Id. A contingent debt is "one which the debtor will  
8 be called upon to pay only upon the occurrence or happening of an  
9 extrinsic event which will trigger the liability of the debtor to  
10 the alleged creditor." In re Fostvedt, 823 F.2d 305, 306 (9th  
11 Cir. 1987) (quotation and citation omitted). In the context of  
12 California state court judgments, it is also well-settled that  
13 unstayed judgments, even those on appeal, "are not contingent as  
14 to liability or amount." Marciano v. Chapnick (In re Marciano),  
15 708 F.3d 1123, 1127 (9th Cir. 2013); and see In re Keenan,  
16 201 B.R. 263, 266 (Bankr. S.D. Cal. 1996).

17 Here, DC Media held a California state court judgment  
18 against Debtor. Debtor filed an appeal shortly before filing  
19 bankruptcy, but after the Judgment Lien was filed.<sup>10</sup> Debtor  
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21 <sup>8</sup> The bankruptcy court's analysis of the insolvency issue  
22 is set forth in its extensive, well-reasoned discussion in the  
23 published Amended Memorandum Decision. See In re Imagine,  
489 B.R. at 144-50.

24 <sup>9</sup> Thus, the full amount of the state court judgment, when  
25 added to the Debtor's balance sheet, resulted in DC Media's  
26 failure to overcome the presumption of insolvency and entitled  
Debtor to summary judgment on the insolvency element.  
In re Imagine, 489 B.R. at 150.

27 <sup>10</sup> On the date of the transfer, which DC Media conceded at  
28 oral argument is the critical date for avoidance purposes, the  
state court judgment was not only not stayed on appeal, it was  
not even on appeal.

1 never sought or obtained a stay, and DC Media commenced  
2 collection efforts on the state court judgment before Debtor  
3 filed bankruptcy.<sup>11</sup> DC Media, nonetheless, argues on appeal that  
4 the bankruptcy court erred when it held, as a matter of law, that  
5 the state court judgment was not a contingent liability. It  
6 argues that for preference analysis purposes the insolvency  
7 determination is a factual determination that required the  
8 bankruptcy court to determine the fair valuation of not only  
9 assets but liabilities. And to do so, it argues, the bankruptcy  
10 court had to consider DC Media's evidence that Debtor excluded  
11 the state court judgment from its balance sheets and DC Media's  
12 expert's opinion that such exclusion was appropriate under  
13 generally accepted accounting principles ("GAAP"). Based  
14 thereon, DC Media argues that the state court judgment was  
15 necessarily a contingent claim that must be discounted to little  
16 or no value in the insolvency analysis. Only at trial, it  
17 argues, could the bankruptcy court find that relevant GAAP  
18 principles were not persuasive. We disagree.

19 "There is no generally accepted accounting principle for  
20 analyzing the insolvency of a company." Arrow Elecs., Inc. v.  
21 Justus (In re Kaypro), 218 F.3d 1070, 1076 (9th Cir. 2000)  
22 (citing Sierra Steel, Inc. v. Totten Tubes, Inc. (In re Sierra  
23 Steel, Inc.), 96 B.R. 275, 278 (9th Cir. BAP 1989)). And as  
24 DC Media concedes, GAAP are not controlling. See In re Sierra  
25 Steel, Inc., 96 B.R. at 278. In particular, "[w]ith regard to

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26  
27 <sup>11</sup> In fact, one of the two other transfers was based on  
28 DC Media's levy on one of Debtor's bank accounts as part of  
DC Media's collection efforts on the unstayed state court  
judgment.

1 the sum of [a debtor's] debts, GAAP are . . . inapposite because  
2 they do not report liabilities in accordance with the right to  
3 payment standard of 11 U.S.C. § 101(5) and (12).” Devan v.  
4 The CIT Group/Commercial Servs., Inc. (In re Merry-Go-Round  
5 Enters., Inc.), 229 B.R. 337, 343 (Bankr. D. Md. 1999).

6 A debtor is insolvent when its debts exceed its assets - the  
7 “traditional bankruptcy balance sheet test.” In re Koubourlis,  
8 869 F.2d 1319, 1321 (9th Cir. 1989). This test is codified at  
9 § 101(32)(A), which defines insolvency to mean: “with reference  
10 to an entity other than a partnership and a municipality,  
11 financial conditions such that the sum of such entity's debts is  
12 greater than all of such entity's property, at a fair valuation”  
13 exclusive of certain exempted or fraudulently transferred  
14 property. Under the Code, the term debt “means liability on a  
15 claim.” 11 U.S.C. § 101(12). And the term “claim” is defined  
16 under the Code to include “right to payment, whether or not such  
17 right is reduced to judgment, liquidated, unliquidated, fixed,  
18 contingent, matured, unmatured, disputed, undisputed, legal,  
19 equitable, secured, or unsecured; . . . .”

20 Based on the foregoing statutory provisions, to the extent  
21 GAAP financial reporting omits any type of collectible debt from  
22 a debtor's balance sheet - whether contingent or noncontingent -  
23 the resulting financial statement is not dispositive as to the  
24 debtor's solvency or insolvency. Thus, the omission of the state  
25 court judgment from such a financial statement does not require a  
26 conclusion that the omitted debt is a contingent debt for  
27 insolvency analysis purposes. As set forth in depth in the  
28 bankruptcy court's published Amended Memorandum Decision,

1 substantial decisional authority supports the conclusion that the  
2 unstayed state court judgment is a noncontingent liability, and  
3 thus, its full amount must be included in the insolvency  
4 analysis. See In re Imagine, 489 B.R. at 149-50. DC Media cites  
5 none to the contrary.

6 DC Media, however, criticizes the test utilized by the  
7 bankruptcy court to determine that the state court judgment was  
8 not "contingent" - whether all events giving rise to the  
9 liability had occurred. DC Media argues that this test is  
10 inappropriate because it was developed in statutory contexts  
11 outside an insolvency determination; statutes that specifically  
12 refer to contingent or noncontingent claims.<sup>12</sup> And, because the  
13 Code definition of "insolvent" refers to "fair valuation,"  
14 DC Media reasons that "Congress intended the insolvency analysis  
15 to be based on a consideration of all relevant and admissible  
16 evidence." Appellant's Opening Brief at 14. DC Media argues  
17 that the bankruptcy court, thus, was required to value the state  
18 court claim<sup>13</sup> at less than its face amount based on Debtor's

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19  
20 <sup>12</sup> In particular, such analysis arises in the context of  
21 chapter 13 eligibility (§ 109(e)); eligibility as petitioning  
22 creditors in involuntary bankruptcy petitions (§ 303); and the  
23 claims estimation process (§ 502(c)).

24 <sup>13</sup> In part, DC Media bases this argument on its  
25 interpretation of § 101(32A) as requiring "fair valuation" of  
26 debts as well as property to determine insolvency. At oral  
27 argument in this appeal, DC Media's counsel argued that the Ninth  
28 Circuit supported this interpretation in Merkel (no citation  
provided). The question at issue in Merkel, was "the standard  
for determining when a contingent obligation to pay is a  
'liability' for purposes of determining insolvency under  
26 U.S.C. § 108(d)(3)." Merkel v. Comm'r of Internal Revenue,  
192 F.3d 844, 846 (9th Cir. 1999). In its comparison of  
insolvency analysis under the Internal Revenue Code section at  
issue and § 101(32A), the Ninth Circuit stated that in

continue...

1 opinion that it would prevail on appeal, the contingency  
2 identified by DC Media. Again, we disagree.

3 It is well-settled that the amount of a contingent claim  
4 should be "determined in accordance with the probability that the  
5 contingency will occur." In re Merry-Go-Round Enters, Inc.,  
6 229 B.R. at 342 (citing Covey v. Commercial Nat'l Bank of Peoria,  
7 960 F.2d 657, 659-61 (7th Cir. 1992)). The amount of a  
8 noncontingent debt, however, is the amount of the claim itself.  
9 Id. DC Media's argument that the state court judgment must be  
10 discounted based on the Debtor's opinion of success on appeal in  
11 effect presumes that the debt is a contingent debt in the first  
12 instance.

13 DC Media's arguments against the established test for  
14 determining a debt to be contingent are not persuasive. We see  
15 no reasoned or statutorily supported purpose to deviate, for  
16 insolvency determination purposes, from the definition of  
17 "contingent debt" as "one which the debtor will be called upon to  
18 pay only upon the occurrence or happening of an extrinsic event  
19 which will trigger the liability of the debtor to the alleged  
20 creditor." In re Fostvedt, 823 F.2d at 306 (quotation omitted).  
21 The Debtor's liability for the state court judgment did not rely  
22 "on some future extrinsic event to trigger liability." See  
23 In re Nicholes, 184 B.R. at 88. In the 90 days before the Debtor  
24 filed its bankruptcy petition, the unstayed state court judgment

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26 <sup>13</sup>...continue  
27 § 101(32A), the "phrase 'at a fair valuation' may be read to  
28 modify both 'debts' and 'property,' . . . ." 192 F.3d at 851.  
Nothing in the Merkel decision, however, supports discounting a  
noncontingent claim.

1 was subject to collection by DC Media, and DC Media partially  
2 collected on the debt, via levy.<sup>14</sup> The question is not whether  
3 the Debtor could ever pay the debt. The question is whether  
4 Debtor was liable for the debt. As of the filing of the Judgment  
5 Lien, Debtor was liable for the full amount of the Judgment, and  
6 the bankruptcy court, therefore, did not err when it determined,  
7 as a matter of law, that the Judgment was not contingent.

8 **CONCLUSION**

9 Based on the foregoing, we AFFIRM.

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23 <sup>14</sup> As set forth in the Amended Memorandum Decision, by  
24 DC Media's calculations, which it based on the discounting  
25 theory, the Judgment should be valued at \$7,394.70, in part  
26 because Debtor had insufficient assets from which to pay it.  
27 In re Imagine, 489 B.R. at 146. The logic of this argument is  
28 facially unsound, as its application would make a finding of  
insolvency never possible - a liability could never exceed a  
debtor's assets. It is also inconsistent with the facts here,  
considering that DC Media actually collected over \$80,000 by  
prepetition levy and actively defended against the Debtor's  
appeal in the state appellate court.